SUPREME COURT, U. S.

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IN THE

Supreme Court of the United States

October Term 1957

No. 864

JOHN J. SPRIGGS, SR., *Petitioner*

v.

PIONEER CARISSA GOLD MINES, INC., a Corporation, and GEORGE B. COLEMERE, HARRY H. HIME, SPENCER J. LEWIS, FRED H. BLUME and HARRY S. HARNSBERGER, *Respondents*

PETITION FOR WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE TENTH CIRCUIT

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INDEX

	Page
Petition for Writ of Certiorari	1
Jurisdiction	2
The Questions Presented	2
Summary Statement of Matters Involved	3
Jurisdiction	24
The Action	24
Reasons Relied on for Allowance of the Writ	26
Statutes Involved	42
Prayer for Writ	47
~~Brief in Support of Petition for Certiorari~~	~~51~~
~~Opinion of the Court Below~~	~~51~~
~~I Opinion of the Court Below~~	~~51~~
~~II Jurisdiction~~	~~51~~
~~III Constitutional Provisions, Statutes and Rules Involved~~	~~52~~
~~IV Summary Statement of Matters Involved~~	~~52~~
~~Specifications of Error~~	~~57~~
~~Argument~~	~~59~~

TABLE OF AUTHORITIES CITED

Atlas Supply Co v Roberts 58 Pac 2nd 76	30
Bank of Chardon v Anderson 6 Wyo 518-48 Pac 197	30
~~Bank of Commerce v Williams 52 Wyo 1-69 Pac 2nd 525~~	~~55~~
Barber v Rena Nash Motor Co 260 Pac 2nd 928	35
Bonar v Keys 162 Fed 2nd 136	37-41
Bottone v Lindsley 170 Fed 2nd 705	41
Black Panthier Oil Co v Swift 170 Pac 238	30
Brun v Mann 80 C C A 513- 151 Fed 145	29
Buck v Galbreath 70 U S 334	29
Bradley v Fisher 13 Wall 335-20 Led 195	41
Brown v Allen 344 U S 535	42
Continental Bank & Trust Co v Apodac 239 Fed 2nd 295-	30
Covell v Hymann 11 U S 176	29

Page

Cromwell v White 94 U S 351-24 Led 195 28
Culp v U S 131 Fed 2nd 93 54
Colorado Racing Com v Brush Racing Com 316 Pac 2nd 58 54
Cobb v City of Maldon 202 F 2'd 701 41
Dinwidde v Brown 230 Fed 2nd 465 41
D U A Co v Benton 149 Fed Sup 667 28
Dye v Cox 125 Fed Sup 714 41
Ex Parte Virginia 100 U S, 399 42
Ex Parte Owen 258 Pac 1- 1 c 779 61
Farmers Loan & Trust Co v Lake City Street Ry 177 U S 51 29
Fayweather v Ritchie 195 U S 296 29-42-54
Fisher v Karl 6 F R D 268 38
Freeman v Howe 7 How 612 29
Francis v Craft 203 Fed 2nd 809 41
Ginsberg v Stern 125 Fed Sup 596—on appeal 225 Fed 2nd 245- 41
Griffity v Bogert 57 U S 158-15 Led 307 28
Gringnon Leesse v Astor 43 U S 319 28
Ginsburg v Stern, case 12,165—just decided 3rd U S Court of Appeals 41
Hague v C I O 307 U S 496- 42
Hill v Benevolent League of Colo 295 Pac 2nd 231..... 55
Hine v Norse 218 U S 493 61
Hodges v U S 203 U S 1 42-54
Holm v Pratt 276 Pac 266 30
Keene Lumber Co v Leventhal 165 Fed 2nd 815..... 38
Keller v French 22 Fed 2nd 341 .af 278 U S-563 73 Led 507 38
Ketchem v Dist Court (Okla) 198 Pac 481 30
King v Superior Court-Prohibition, 12 Cal App 501 56 Pac 2nd 268 61
Kline v Burk Const Co 260 U S 266 29
Kurtz v Pittsburgh 31 Atl 2nd 257 63
Lang v Chotaw 160 Fed 359 29

Page

Latimer v Vanderlice 178 Okla 501, 62 Pac 2nd 1197.... 60
Marbury v Madison 1 Cranch 137 63
May v Penton 16 P2nd 35 35
McCoy v Providence Journal 160 Fed 2nd 760..... 41
Mcshane v Moldovan 172 Fed 2nd 1016 41
Neilson v Schiller (Utah) 66 Pac 2nd 365 30
Nelson v Knox 230 Fed 2nd 483 40
Olson v Leith 33 Wyo 281-257 Pac 342 55
Operator's R P Co v Tulsa 56 Pac 2nd 400 (Okla)..... 30
Osborne v Michelson 13 Wall 654-20 Led 689 54
Oynar v California 332 U S 633 60
Park-in-Theatres Co v Paramount Richards Theatres 9 F R D- 38
Parkinson v California Co 233 Fed 2nd 432 10th Cir.... 38
Peckham v Scanlon 241 Fed 2nd 761 38
Picking v Pennsylvania Ry Co 151 Fed 2nd 240.....40-41
Rickey Land & Cattle Co v Miller, 152 U S 258 29
Riverside Cotton Mills Co v Ala ' Ga M Co 198 U S 189 29
Root v Woolworth 150 U S 401 29
Rupe v Associated El Co 6 F R D 309 38
Ryan v Scoggin 245 Fed 2nd 54 41
Screws v U S 325 U S 91-89 Led 1495 41
Sheridan Wyo Coal Co v Krug 172 Fed 2nd 282..... 38
Silvers v Maryland Causalty Co 239 Fed 2nd 256 55
Simmons v Parrent (Wyo) 256 Pac 2nd 105..... 35
Snare & Trieste v Friedman 188 Fed 300..... 55
Standolind Oil Co v Busy 90 Pac 2nd 877 (Okla)..... 30
Supp v U S 131 F2'd 93 42
State v Palmer 158 Fed 705-212 U S 118-..... 30
State Ex Rel Sullivan v Reynolds 209 Mo 167 -1o7 SW 487 30
State Ex Rel v District Ct 33 Wyo 281-238 Pac 545.... 55
Stillman v Combe 198 U S 435 29
Tait v Western Md Ry Co 289 U S 620-77 Led 1405.... 28
Tate v Arnol 223 Fed 2nd 782 41

Page

Tenney v Brandhove 341 U S 367-95 Led 1019 41
Trustee Co v Aetna Casualty Co 310 Pac 2nd 727..... 58
Throckmorton v U S 98 U S 86 28-35
Tibbals v Keys 281 Pac 190 22-30
Toledo v Luebo De James 119 Fed Sup 429..... 41
U S v Classic 313 U S 99, 85 Led 1368 42
U S v Herter 148 Fed Sup 349 28
U S v Jackson 235 Fed 2nd 925 42-54
U S v Johnson 73 U S 166 29
U S v Newberry M Co 123 Fed 2nd 453 38
U S v Mossier 266 U S 236-69 Led 262 28
U S Shoe Co v U S- 258U S 454 66 Led 717 28
Van Sant v American Express Co 159 Fed 2nd 355..... 38
Voorhes v Bank 10 Peters 450 28
Whitaker v Dillingham 152 Pac 2nd 371 60
Wiswall v Sampson 55 U S 52 30
Wurnicke v Leith 61 Wyo 191-157 Pac 2nd 274 55

CONSTITUTIONS AND STATUTES

U S Constitution 5th and 14th Amendments.....18-36-37-38-39-45-54

Sec 89-1277 Wyo stat 1945 —.....38-46

Wyoming Constitution Art I—Sec 2-6-7-8-9-20-32-33-34-37—Art V Sec 25 38-45-46

STATUTES

42 U S C A Sec 1983-5-6-8 3-9-25-31-36-37-39-40-42-43-44

Wyo 3-907; 1-112 6-8-12-29-30-38-46-54-57

F R C P-15 a; 8 c; 12 h-25 23-37-44-45

Holy Bible—Mark 3-27.....25-39-47

18 U S C A Sec 51..... 42

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PETITION FOR WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE TENTH CIRCUIT

To the Honorable Earl Warren, Chief Justice of the United States Supreme Court, and to the Honorable Associate Justices of the Supreme Court of the United States:

John J. Spriggs Sr., petitioner, prays that a Writ of Certiorari issue to review the judgment of the United States Court of Appeals for the tenth Circuit rendered on the 20th day of December, 1957. (—— Fed 2'd ——).

The United States Court of Appeals for the tenth circuit affirmed two orders and judgments of the District Court of the United States for the District of Wyoming, dismissing the action of your petitioner, plaintiff therein.

JURISDICTION

The judgment of the United States Court of Appeals for the tenth district was entered December 20, 1957. The jurisdiction of this Court is invoked under 28 U.S.C. 1254 (1).

THE QUESTIONS PRESENTED

Petitioner presents to this court the question of whether the Court of Appeals was in error in afirming the orders and judgment of the District Court below dismissing the action of plaintiff. The specific questions of law here presented may be stated as follows: Does the Complaint in the present action state a claim upon which relief can be granted against defendants, or either of them under the Civil Rights Act? These questions can only be answered by correctly determining:

a) Did the Court of Appeals err in affirming the order of the District Court below dated May 13, 1957 (R 25-pg 24-25-26) and each separate provision of the order, namely:

1-Affirming that provision of the order that adjudged that defendant Judge Spenc[illegible] J Lewis, and defendant Fred H Blume were each immune from suit by reason of having acted in their respective judicial capacities?—which is to say; Are members of the state judiciary acting in their judicial capacity immune from civil action in federal courts for violation of citizens rights under the Constitution and laws of the United States, particularly the Civil Rights Act now embodied in 42 U S C A Sec 1983-1985 1986, 1988, 1954 Supp ? And are they so immune when acting wilfully, maliciously, with the designed evil and purposeful intent to discriminate against plaintiff as charged in the Complaint, and admitted and confessed in the record herein?

2) Affirming that provision of the order that denied plaintiff the right to amend his Complaint under Rule

15a as to defendants Judge Lewis and Judge Blume; And further denying plaintiff the right to amend his Complaint as to the remaining defendants except under the restriction that plaintiff must first submit his proposed amended Complaint to the Court who would then determine if it could be filed?

3) Affirming that provision of the order that adjudged that the action abated and did not survive the death of Judge Lewis as to that defendant?

4) Affirming that provision of the order that adjudged the Complaint failed to state a claim on which relief could be granted as to all defendants?

b) Did the Court of Appeals err in affirming the order of the District Court below dated May 28, 1957 (R 71-pg 27-28) which denied plaintiff the right to file his amended Complaint?

c) Did the Court of Appeals err in sustaining the above orders of the District Court below denying plaintiff the right to amend his Complaint under Rule 15 a—no responsive pleading having been filed by any defendant? And further denying plaintiff the equal protection of law under Rule 8 c and 12 h?—which is to say; Is it err to deny plaintiff the equal protection and benefit of the aforesaid Federal Rules of Civil Procedure on an equality with every other citizen and litigant in the federal courts?

SUMMARY STATEMENT OF MATTERS INVOLVED

The United States District Court for the District of Wyoming, by two separate orders and judgments, the First dated May 13, 1957 (R 25-pg 24-5-6) sustained separate motions of each respective defendant, dismissing the action as to each and all defendants for failure to state a claim upon which relief could be granted, which first order denied plaintiff to amend his complaint under Rule

15a of RFCP. (For Rule 15a See Appendix pg) The motions of defendants Harry H Harnsberger (R 17-pg 22) and Fred H Blume (R 23), asked only dismissal of the Complaint. A dismissal of the Complaint does not dismiss the action, but leaves the action pending for amendment. The court went beyond the motions and granted relief not asked (R 25-pg 24-5-6). The other motions asked dismissal of the action (R 19-pg 23) which the court did (R 25-pg 24-5-6) The District Court—SUA SPONTE—interposed and favorably adjudged for defendants Judges Blume and Lewis a defense of judicial immunity as acting in their judicial capacities. and denied plaintiff the right to amend his complaint as to them (R 25-pg 24-5-6) As to defendant Lewis, the order adjudged the action had abated with his death (R 26, pg 25) The order dismissed the action as to all defendants, denied plaintiff the right to amend his complaint, but provided plaintiff might submit any proposed complaint as to the remaining defendants, whereupon the court would then determine if it could be filed. This was a denial of equal legal, procedural, and absolute rights under Rule 15 a (For order see R 26-pg 24-5-6) Plaintiff submitted his proposed amended complaint but by order of May 28, 1957 (R 71-pg 27-8) -plaintiff was denied the right to file such amended complaint. The order was a denial of equal rights of plaintiff under Rule 15a.

Plaintiff gave timely Notice of Appeal from both orders, and filed cost bond, and appealed from each order and each separate provision thereof. (R 28, pg 26-7) R 76-pg 29) and from the discriminatory action of the U S District Court in denying plaintiff the equal protection of the law under the Federal Rules of Civil Procedure.

The Court of Appeals affirmed the orders of the District Court dismissing the action, but refused to adjudge on the particular assignments of errors, namely: judicial immunity of defendants Lewis and Blume; abatement

of action by death of Lewis; denial of protection of Rules 15a, and 8c and 12 h; or to take notice of, discuss or adjudicate on the vital and essential allegations of the complaint constituting a claim against defendants.

On defendants' motions to dismiss for failure to state a claim on which relief could be granted, the sole question before the District Court, and the Court of Appeals is: "Taking the complaint as true, with every material allegation, and every reasonable inference to be drawn therefrom, as true and confessed, when viewed in the light most favorable to plaintiff, does the complaint state a claim, under any theory of law, whether or not the pleader has misconceived the proper method of stating his claim, does the complaint state a claim upon which relief can be granted"?

The court will not test the complaint as to whether or not it states a cause of action, as against the scope of the statutory word CLAIM, or concern itself as to the extreme difficulty of amending the complaint.

The defendants filed no motion for summary judgment. Had they filed such motion, the same would require supporting affidavits, setting up the essential allegations of pleading in prior litigations, and the particular and essential point determined as necessary to the particular judgment, and upon which the judgment must rest. This would includude allegations showing jurisdiction in the court, with jurisdiction of the parties, and the subject matter, and with the now third essential of jurisdiction of the court to render the particular judgment it did. Upon such motion, and showing, the plaintiff can file a counter-affidavit, setting up facts showing a lack of jurisdiction, lack of identiy of parties, or privies, lack of identiy of the particular essential issue, or of parties, or of new title since acquired, with any other like material matter. This provides a hearing, in open court, and if there is any issuable fact to be determined, the motion for sum-

mary judgment must fail. The Court of Appeals had no such basis upon which to base its decision that the Civil Rights of plaintiff had been adjudicated in the cases relied on. The record herein would require judgment for plaintiff without question.

The only pleading before the court herein, is the complaint. All material allegations, and all reasonable inferences are taken as true, admitted and confessed. The complaint, par 4-19, pg 4-12 set up the final, absolute, res judicata, conclusive judgments of cases 4182-4623 of the District Court of Fremont County, Wyoming, and of the Supreme Court of Wyoming on appeal thereon, in 40 Wyo 524, cases 1667, and 1676 of the same Supreme Court, all courts of competent jurisdiction, with full and complete jurisdiction of the subject matter, the parties, and with jurisdiction to render the particular judgment which they did, namely full and complete jurisdiction to establish the First Trust, decree sale to satisfy the First Trust, and the judicial sale under the Supreme Court mandate aforesaid to satisfy the First Trust, with the adverse parties filing a Written Waiver of Right to Appeal, directing the court to make the judgment final, absolute, conclusive, all of which was done. The making of the sale and deed to one Tibbals, confirmation of sale, by direction of all parties, including the subsequent Midwest lessee, and its privy, and ratification by the alleged receiver of the Midwest lessee. It set up the deed from purchaser Tibbals to plaintiff. It set up Sec 3-907 Wyo Stat. 1945 excluding acquisition of any adverse rights against Tibbals after March 17, 1928, date of serving summons in case 4182, the suit to establish and foreclose the First Trust (Par 4 to 13-pg 4 to 9 R) It set up in support of said Sec 3-907 Wyo Stat-45, the universally established law as declared by the Supreme Court of the United States, and the Federal Courts, and different State Supreme Courts, and especially the Supreme Court of Wyoming (See record, par 4-5, page 4-5 which gave the

District Court and the Wyoming Supreme Court in 40 Wyo 524, the sole, prior, exclusive jurisdiction, custody and control of the properties involved, which are the same properties the possession, use, control and enjoyment of which was denied plaintiff by defendants. It alleges total lack of jurisdiction of the subsequent collateral court in case 50 Wyo 277 (R par 12 to 20, pg 8 to 12). It alleges that while plaintiff Tibbals was up in the Supreme Court litigating his First Trust, the same identical defendants, as owners of the properties, gave a 4 year lease, from Oct 10, 1928 to Oct 10, 1932 to Midwest Mining Corporation, the subsequent lessee; That the subsequent lessee became insolvent. A creditor Marrin, on Nov 3 1930—which was 2 years and over 7 months after March 17, 1928, the date of summons in case 4182 to foreclose the First Trust, filed suit to collect $901.25 for wages against the Midwest Mines Corporation (R par 13, pg 9) and the court appointed a receiver for the insolvent lessee. It set up that the RES of the receivership was the property of the lessee, its mining equipment; and any unexpired term of the lease, but that it did not include the fee simple title of the owners, the lessors (R par 20, pg 12) That on final judgment the court in case 4623, acting under the prior mandate of the Supreme Court, 40 Wyo 524, did specifically adjudge that the receiver had no claims to the properties of the owners, or against Tibbals (R par 14 to 18-pg 9-12). It alleges that thereafter, the receiver, was by order of the court in the receivership case, 4561, TO CLOSE THE RECEIVERSHIP, ordered to sell all property in receivership, specifically listing the RES as the mining equipment, and the 6 weeks unexpired term of the lease. That this was done, Sept 1-1938 all the RES was bought in by creditors, in full satisfaction of all debts whatsoever of the insolvent Midwest lesse, all receivership costs, charges and demands whatsoever. And that conveyance was made therefor. And that the lease expired by its own limitations on Oct 10, 1932. (R Par

19-20, pg 12-13) That plaintiff Marrin died July 1943, there was no revivor, and there has been no plaintiff in case 4561 since that date. (R par 13, pg 9) and the franchise of Midwest Mines Corporation, a foreign corporation, was forfeited in 1933. (R par 13, pg 9). The petition sets up a deed from Tibbals to plaintiff, Mch, 3,1933 of an 11/24 interest in the properties. R pg 2) (R par 21, pg 13) The complaint alleges that on March 3, 1933, defendant Graham, pretending to act as receiver of the subsequent, privy, actual party, Midwest lesse, entered upon and into the properties, and that the owners, plaintiff and Tibbals brought suit 4871, which is 50 Wyo 277 to oust the trespasser. (R par 9, pg 13) That defendant Fred H Blume was Supreme Judge acting in case 50 Wyo 277, the defendant Harry S Harsnberger, was attorney for the alleged receiver and was trying to get possession of plaintiff's property; that said defendant Harnsberger, in conspiracy with alleged receiver Graham, and Judge Blume and others conspired to deprive plaintiff of his property without due process of law, and to deny him the equal protection of the law, and to deny him the equal protection of the final res judicata, conclusive judgments of the District Court of Fremont County, Wyo, in cases 4182-and the ancillary case, 4623 therein, and of the Supreme Court of Wyoming in case 40, Wyo 524, and cases 1667 and 1676 of the Supreme Court, and 5th and the 14th Amendments to the constitution of the United States, and the Bill of Rights of the Wyoming Constitution, particularly, Sec 2-6-7-8-9-20-32-33-34 of Art I of the Wyoming constitution; and sec 3-907 Wyo Stat 1945; and in conflict with tnd discriminatory against plaintiff, as further established by the universal law of the land as decreed by the Supreme Court of the United States, the Federal courts, the different State Supreme Courts, including the Supreme Court of Wyoming, and as required by Sec 3-907 Wyo Stat, 1945. (R par 22-23-24-25, pg 13-14) The complaint al-

leged facts showing a total lack of jurisdiction in both the District Court of Fremont County, Wyo in case 4871, which was 50 Wyo 277 on appeal in the Supreme Court to relitigae, annul, and set aside the final conclusive judgments of the same courts in prior cases—4182-4623, 40 Wyo 524, cases 1667 and 1676 of the Wyoming Supreme Court, or the final sale and deed and confirmation of sale and deed of the fee simple properties to Tibbals on Oct 15, 1932. The complaint alleged that, under color of law, defendants had by conspiratorial action, with the evil and purposeful intent to discriminate against plaintiff and deprive him of his property, and the use and enjoyment thereof and to deprive him of his rights thereto in violation of the 5th and 14th amended to the constitution of the United States, and the Bill of Rights of the Wyoming Constitution, and sec 3-907 taken from plaintiff those rights, in violation of the Civil Rights Act of Congress, 42 USCA, sec 1983-1985-1986-1988, and had actually acomplished their purpose, to the great damage of plaintiff. The complaint further alleged facts as the prompting motives actuating defendants, namely that plaintiff was at that time a candidate for Supreme Judge, which aroused the wrath of Judge Blume and other conspirators, including alleged receiver Graham, and defendant Harnsberger, attorney, who were striving to get possession of the property of plaintiff and deprive him of the same, and that in its official opinion Judge Blume and the Supreme Court, actuated by bias, prejudice, ill will and hatred, went out side the record, inserted in the court opinion matters accepted and published by the press as answering the campaign adds of plaintiff, and rendered a totally void judgment, which the court had no jurisdiction to do, relitigating collaterally and annuling the prior final, res-judicata, conclusive judgments of same courts in the prior cases. That such action and judgment was totally void, without jurisdiction, a complete nullity and conveyed no rights of possession,

use, enjoyment or title to the alleged receiver and constituted no defense to any defendant herein. That such void judgment was the same as no judgment, and left the defendants in the same position as if no judgment at all had been rendered therein, and constituted no defense to plaintiff's action. The complaint alleges that plaintiffs therein filed petition for rehearing, setting up the voidness of the judgment in 50 Wyo 277, and the bias and prejudice of the court, and the publication by the press as an answer to plaintiff's campaign adds, and that thereby plaintiff were denied their property without due process of law, with a request that Judge Blume and fellow-judges call in other judges to pass on the petition for rehearing. That defendant Harnsberger suggested to the court that it was contempt to charge the judges with bias and prejudice, and that Judge Blume caused an order to be made directing Attorney Harnsberger to appear as FRIEND OF THE Court and prosecute the contempt matter, which was done. That this was in punishment and reprisal against plaintiff, and to compel him to submit to a void judgment which took his property without due process of law, and denied plaintiff the equal protection of the law as guaranteed in the 5th and 14th Amendments to the U S Constitution (R par 25-pg ;4-15) The complaint alleged that when the judge came up for re-election, plaintiff became a candidate against him. That he wrote a letter to the lawyers exposing the errors of the court, and for this, he was prosecuted as unfit to practice law. That Judge Blume caused the same judge who rendered the opinion in case 50 Wyo 277 to sit in judgment on plaintiff in this action, and that thereby, under this conduct, repulsive to American concept of right and justice, the plaintiff was suspended from practice, his means of livelihood taken away, his good name and reputation blasted with damages. That this was in reprisal and punishment of plaintiff for further protesting the taking of his property without due process

of law in 50 Wyo 277. The complaint alleged the conspiracy of defendants was a continuing conspiracy, and was continuing to this day. The second cause of action set up facts showing the conspiracy, and the actual denial of property without due process of law, and the denial of equal protection of law as continuing, and continuing denial of the use, possession and enjoyment of plaintiff to his property, and the further final divestment of title thereto, by the issuing of a receiver's deed to defendant Pioneer Carissa Gold Mines Inc. (R par 36 to 41-pg 17-31) and dividing up the proceeds, between defendant Harnsberger, defendant Hime, alleged receiver, the widow of prior receiver Graham, and the widow of the prior receiver's attorney, and the attorney for present receiver Hime. The second cause of action set up a new title in plaintiff not existent in 50 Wyo 277, and the Federal court in 172 F 2nd 449. The complaint alleges Feb 20, 1950 plaintiff acquired deed from Federal Gold Mining Company and Executors of the Spry estate for the properties (R par 1-pg 3) Paragraphs 29-30-31-32 (R pg 16)—for some reason not appearing and for which plaintiff cannot account—perhaps some reason of inadvertance, but which could be corrected by amendment,—were omitted from the printed Transcript. However therein plaintiff alleged that in order to satisfy and appease the court, he had in Feb 1950, purchased from Federal Gold Mining Company and the Executors of the Spry estate, the defendants in cases 4182-4623, 40 Wyo 524, the title of record. This was a step taken because the court had adjudged the sale to Tibbals to be void, and stubbornly refused to correct the error. Then if the sale should ARGUENDO be taken as invalid, then the title remained in the owners. If plaintiff acquired the owners' title, then plaintiff would be entitled to the possession, use, enjoyment and full title to the properties and the court could have no reason thereafter to deny plaintiff such full right. The court had already finally adjudged the receiver to

have no claim whatsoever to the properties (R par 12-13-14-15-16-17-18-19-19 et seq, pg 8 to 12) And under sec 3-907 Wyo Stat-45, and the universally established law, that was true. The same paragraphs alleged that in the meantime, Attorney Harnsberger had been appointed Supreme Court Judge, and that he was forbidden by Sec 25, Art V of the Wyoming Constitution, and also by Sec 1-112 of the Wyo Statutes-45, from practicing law, or giving advice and counsel to any parties. That plaintiff having acquired this new title, then filed case 7521 in the District Court of Fremont County to oust the Pioneer Carissa Gold Mines Inc, defendant who claimed to hold under an option from Graham, negotiated by defendant Harnsberger. That under this void lease, the Pioneer Carissa Gold mines Inc, with George B Colemere as its chief controlling officer, had depleted the plaintiff's property by taking out over $70,000. in mineral ores. That conspiring with Pioneer Carissa Gold Mines, and Colemere its Chief officer, defendant Harnsberger, while such Supreme Court Judge, in violation of the constitutional, and statutory inhibitions against him as such judge, did appear as attorney in case 7521, and filed an answer for Pioneer Carissa Gold Mines, and set up as a defense, the void leases, and the void judgment in case 50 Wyo 277. To this void answer, plaintiff filed a motion to strike the answer from the files as an illegal pleading. (R par 33, pg 16) but Judge Lewis denied the motion. That plaintiff then demurred to the answer for the same reason which Judge Lewis overruled. That thereby plaintiff was denied the equal protection of the law, and equal rights, privileges, and immunities under the law, in that he was compelled to cope with the influence of a Supreme Court Judge, acting as attorney. That on trial, Judge Lewis refused to oust the trespassers and held them in possession of his property. The complaint alleges an appeal by plaintiff to the Supreme Court, Judge Blume presiding, denied the appeal (R-par 35-pg 17) The complaint

alleges that at this time, plaintiff was again a candidate for supreme court justice opposing Judge Blume, and was exposing the error of the Supreme Court in 50 Wyo 277 as a taking of his property without due process of law, and as a denial of equal protection of the law. The complaint alleges that during this time plaintiff met Judge Blume at the Wyoming State Bar meetin, approached him, extended his hand with a cordial greeting; How do do Judge? but Judge Blume refused to speak to plaintiff or take his hand (R par 35-pg 17) That Judge Blume then sat on plaintiff's appeal in case 7521 denied the appeal. That in this Judge Blume was actuated by bias, prejudice, hatred and illwill, and his judgment was for this reason alone void. The complaint does not allege, but the evidence would show, that in the meantime, the Attorney Stanton, set up in par 35, pg 17, became a District Judge, and Judge Blume called him in to sit as Judge, along with Judge Blume, on the Prohibition case. The complaint alleged that plaintiff applied for reinstatement of his appeal under Rules of Court, setting up that plaintiff was being denied the equal protection of the law, and his property was being taken without due process of law, but Judge Blume denied reinstatement, and in this he was actuated by the same bias, prejudice, hatred and ill-will. The complaint then alleges that on June 9, 1954, Judge Lewis sat as Judge in case 4561, but neither plaintiff nor Tibbals were parties to this action. (R par 36, pg 17) That he made an order allowing defendant Hime, alleged receiver, a fee of $1400. and a fee of $1000. to his attorney, and directed that it be paid from a sale of plaintiff's property.

Further the complaint alleges that on April 22, 1955, defendant Harnsberger, then a Supreme Court Judge, filed in case 4561 a claim for services in the amount of $15,000 and some more for costs. That he set up as basis for his claim his services in negotiating the leases from receivers Graham and Hime, to Pioneer Carissa Gold Mines Inc;

he set up services to the receiver as attorney in case 50 Wyo 277; and his services as prosecuting plaintiff in the contempt case; and like services to the receiver. That as Supreme Court Judge, as claimant, he appeared in open court and presented his claim, pro se; that he was greeted by Judge Lewis as MR JUSTICE HARNSBERGER; and claimant was allowed the special, discriminatory favor proving his case and claim by his open statement without being sworn; and Judge Lewis allowed him a fee of $7,500. plus $1500. extras as costs, and directed the receiver to sell to Pioneer Carissa Gold Mines, all of plaintiff's property and pay the claim out of the proceeds; That Judge Lewis then made further orders in case 4561 allowing the widow of prior receiver Graham a fee of $15,000. plus more for costs; and allowing the widow of the prior attorney for the receiver an extra fee of $7,500, plus $543, as costs; and a further order allowing defendant Hime, alleged receiver, $750. more and the attorney of Hime $400. more, with further allowance afterwards; and directed the alleged receiver Hime to sell plaintiff's property to Pioneer Carissa Gold Mines, and execute a deed therefor, and pay all of the above illegal allowances out of the proceeds of the sale, all of which was done (R par 38 pg 19) Defendant George B Colemere was in these proceedings chief officer and manager of Pioneer Carissa Gold Mines, and conspired with the other defendants to deprive plaintiff of his property without due process of law and to deny him the equal protection of the law, and accomplished the same. That Judge Lewis and the court was without jurisdiction to make said order, or sell plaintiff's property, and all his acts and orders were totally void. (R par 39-pg 19).

The complaint further alleges that in July 1956, plaintiff made application to the Supreme Court, Judge Blume presiding, for a Writ of Prohibition, asking that Judge Lewis and the court in case 4561 be prohibited from holding the alleged receiver and Pioneer Carissa Gold Mines

in possession of plaintiff's property or from selling and issuing a deed thereto to Pioneer Carissa Gold Mines, as Judge Lewis had ordered, setting up the total lack of jurisdiction in Judge Lewis and the court, the voidness of his orders, and showing the court that plaintiff was being denied his property without due process of law, and was denied the equal protection of the law (R par 39, pg 19). The complaint alleges that being conscious of the bias, prejudice, enmity and hatred that Judge Blume held toward plaintiff, he informed Judge Blume that plaintiff believed he could not get a fair hearing before the court with Judge Blume presiding, and courteously asked Judge Blume to disqualify himself but Judge Blume refused to do so, sat in judgment and denied the Writ of Prohibition. That over the protest of plaintiff Judge Blume permitted the defendant Pioneer Carissa Gold Mines to appear, and it set up the void judgment in 50 Wyo 277, and the leases between the receivers Graham, and Hime as a defense. He also called in to sit as Judge with Judge Blume, the Attorney Stanton mentioned in par 35 pg 17, who had just prior to the hearing been appointed a District Judge. That the court denied the Application for Prohibition, and in its judgment went beyond its proper duty and decreed: "Any attempt further to try to claim ownership of the foregoing property is a grave abuse of judicial process "which was meant as and taken by plaintiff as an intimidating threat that unless plaintiff bowed to the arbitrary and void acts of the Court which so took his property without due process of law, he would suffer drastic action from the court. The court, Judge Blume presiding, further declared that plaintiff was not the owner of, or entitled to possession of the properties, but that Pioneer Carissa Gold Mines was such owner.

It was the constitutional and legal duty of Judge Blume and the court to grant Prohibition, and restrain Judge Lewis from holding the trespassers in possession of plaintiff's property and from selling the same.

Failure to do so was an abuse and misuse of judicial power, so done wilfully, maliciously and with the evil intent to purposely discriminate against plaintiff, deny him the equal protection of law, and take his property without due process of law contrary to the federal guaranties of the 5th and 14th Amendments to the U S Constitution, and the Bill of Rights and statutes of Wyoming, and the universally established law of the entire land, and in violation of the Civil Rights Acts of Congress set up in the complaint. The court passed over without notice or comment, or consideration the new title acquired under the deeds of Feb 20, 1950. This new title did not exist in 50 Wyo 277, and was not a matter at issue or adjudicated therein, and could not be cited as res judicata. The Court of Appeals commited the same error.

Under the established law of this Supreme Court, and of the federal courts, declaring that under the Motions to Dismiss, all material well-pleaded allegation, and all reasonable inferences, when viewed in the light most favorable to plaintiff, are taken as true and confessed, the Complaint did state a perfect claim against all defendants on which relief could be granted.

To summarize thus far, the complaint set up a confessed denial of his equal rights privilege and immunities in the following particulars, towit:

1 A denial of the equal protection of the final, res judicata, Conclusive judgments of the District Court of Fremont County, Wyoming, in cases 4182- and 4623; and of the Wyoming Supreme Court in 40 Wyo 524, and cases 1667 and 1676 of the Supreme Court, those being courts of unquestioned competent jurisdiction over the parties, over the subject matter, and with complete, prior, exclusive jurisdiction over the properties, their custody and control, and with full and complete jurisdiction to render the particular judgment therein rendered, including the jurisdiction to establish the FIRST TRUST in favor of

Tibbals, and to decree sale of the properties to satisfy that FIRST TRUST, and with full prior exclusive jurisdiction to enforce the judgments by sale, deed, and confirmation of sale and deed to Tibbals, all of which was done.

2 That the final judgments therein were final, res judicata, and CONCLUSIVE thereafter on the parties, and privies, and no court, in any subsequent collateral case, such as case 4561, or 50 Wyo 277, or any other collateral court, including the U S District Court of Wyoming, or the Court of Appeals herein, has jurisdiction, power, or authority in law to collaterally relitigate, or annul the prior final judgments therein, or to relitigate, vacate or modify the rights of litigants, privies or grantees acquired therein. The complaint so alleges, and this is admitted.

3 That any attempt of any subsequent collateral court to do so, or to interfere with, obstruct, alter, delay, modify or defeat the prior exclusive sole jurisdiction, custody or control of the prior court over the properties therein sought to be appropriated, herein case 4182, after summons, March 17, 1928, (R par 4 to 18, pgs 4-13) is totally without jurisdiction, is totally void, and a void judgment is the same as if no judgment had ever been entered, and such void judgment cannot be the bases of any right, or title, or interest as against such right title, claim or interest litigated and adjudged in the prior case. It follows that the court in the subsequent case 4561-50 Wyo 277, and other subsequent collateral cases cited by the Court of Appeals were each and all totally without jurisdiction, totally void, and constitute no defense whatsoever to the Complaint herein. The Complaint so alleges. It is admitted.

4 That the final judgments in cases 4182 and 4623 of the Fremont County Wyoming District Court, and in 40 Wyo 524 and cases 1667 and 1676 of the Supreme Court

gave Tibbals valuable property rights in and to the properties therein adjudged, which property rights are protected by the 5th and the 14th Amendments to the Constitution of the United States forbidding taking of property without due process of law and forbidding a denial of equal protection of law. And further that the final court execution of those judgments, with sale, deed, and confirmation of sale conveys a full title, valid in law, and a title which cannot be thereafter taken away, denied or abridged without violating the above mentioned constitutional prohibitions. The Complaint alleges deprivation of these rights. Defendants admit same.

5 The title acquired by Tibbals under the final, res judicata, CONCLUSIVE judgments, sale and deed carries the full right, privilege and immunity of right to possession, use, and enjoyment of the court deeded properties, and deprivation of such rights by defendants from plaintiff as grantee of Tibbals, and also his further right as owner of a contingent interest in the property involved in case 4182-4623- 40 Wyo 524, cases 1667-1676 of the Supreme Court at all times after March 17, 1928, date of summons in case 4182, amounted to a taking of property without due process and deniel of equal protection of law. The complaint alleged this deprivation of rights continuing to the present day. The defendants admit the allegation.

6 The complaint alleged deprivation of the right of plaintiff to be free from further and continuing annoying litigations with defendants as a right privilege and immunity protected by the same provisions of the U S Constitution. It alleged a deprivation continuing to this day. And the further discrimination of being compelled to litigate with a stranger to his title, a wilfull malicious trespasser, and imposition never imposed on other litigants or citizens. And the now further most humiliating imposition of being subjected to never-ending litigation

with Judges of State Courts for their violation of duty and sworn obligation to protect him from a deprivation of his property by trespassers without due process of law, and a denial to him of the equal protection of the law. And the subjection of plaintiff to punishment and reprisals for defending his property and his rights in the courts of his state and nation. The defendants admit this.

7 The complaint alleges ownership of his property by two deeds of purchase, and denial of the rights privileges and immunities enuring to him as such purchaser, and rights enuring to him as a member of society, and as enuring to him as a human being under the assurances of the Divine conception, such deprivation being the wilful, malicious purposeful discrimination, evil designed conspiratorial act of defendants. And defendants admit this by their motion to dismiss.

8 The complaint alleges that the alleged receiver Graham, acting in conspiratorial concert with defendant Harnsberger, with no possible semblance of legal right, entered upon plaintiff's property, and that thru the continuing conspiratorial concerted acts of defendants, Judge Blume and state judges has held the trespassing in possession of plaintiff's property for over 24½ years. That Judge Lewis in case 4561 allowed illegal claims against the properties, and directed alleged receiver to sell the properties to Pioneer Carissa Gold Mines, and pay these illegal claims, and all this was done. That under the void leases, defendants depleted the properties by taking out and removing and selling over $70,000. of mineral ores. Plaintiff in addition to suffering loss of the possession, use and enjoyment of his property, now finds himself totally divested of his title, And defendants by their motion to dismiss admit all these allegation, and that they acted wilfully, maliciously with the purposeful intent to discriminate against plaintiff. Further they admit the allegations of the complaint that in so doing

plaintiff was deprived of his property without due process of law and was denied the equal protection of the law.

It is established law that a judgment outside the issues, or contrary to the issues is void. It was the duty of the Court of Appeals to decide the appeal on the issues and record before it. Neither the District Court below, nor the Court of Appeals had anything except the Complaint, and motion to dismiss before it. All allegation of the Complaint are confesssed and admitted.

It is established law that neither the opinion of a court nor its reasoning can be looked to as a basis to support a plea of res judicata. Neither is a court permitted to appropriates unsupported statements in the brief of the adverse party as a substitute for a pleading of res judicata. The plea of res judicata must be based on a specific pleading. Such pleading must allege the essential facts to support res judicata. In the case at bar, it was necessary that defendants, by special and affirmative plea (Rule 8 c-12 h) allege the specific judgment relied on. There must be a plea of identity of parties, or privies, of subject matter, and facts showing jurisdiction in the prior court to render the particular judgment it did render; and that the matter and issue adjudged was the essential issue adjudged by the court, and without a finding on that particular the judgment could not have been rendered. There was no basis for the Court of Appeals to show a judgment of the state court in the cases it cited sufficient to sustain res judicata. The defendants had no pleading at all. Res judicata is an affirmative plea, (Rule 8 c; and failure to plead any affirmative matter is a waiver thereof. This included judicial immunity. There was no identity of subject matter. The complaint (R par 1 pg 3) set up a new title, a deed from the prior owners. The court of Appeals cites 50 Wyo 277 and as well 172 Fed 2nd 449 to establish prior adjudication under the Complaint, when that new title was acquired after those decisions.

The Court of Appeals was confined to the motion to dismiss, and this admitted the allegations of the complaint. This complaint did not even mention case 172 Fed 449. This was placed before the court by the unsupported statements of defendants' briefs. Neither did defendants plead judicial immunity. Yet the District Court, SUA SPONTE adjudged such defense for Judges Lewis and Blume, and the Court of Appeals affirmed the lower court's action.

There was not even a motion for summary judgment. Had such motion been interposed it would have required a supporting affidavit by defendants, setting up the prior judgment relied on, with a showing of identity of parties, subject matter, and with jurisdiction in the court to render the particular judgment. To this plaintiff would file a counter affidavit, showing lack of any essential element of res judicata. This provides a hearing, and if there is any question on an issuable fact, then the motion fails. Here was a new title set up in the complaint, with allegations of lack of jurisdiction, and voidness of the attempted relitigations cited. The complaint in alleging the final judgment, sale and deed in cases 4182-4623- 40 Wyo 524, cases 1667-1676 of the Supreme Court stated a perfect claim, in that the judgment and title was not subject to relitigation in any subsequent collateral case. That the purchaser at the sale, and plaintiff his grantee were free from taking notice of, or from litigating by any of the subsequent colateral cases relied on by counsel for defendants. Yet plaintiff is even now compelled to litigate with defendants, and Judges, concerning matters not subject to relitigation. This is discrimination, forcing on plaintiff a denial of his rights, privileges and immunities to which no other citizen or litigant can be required to do.

The Court of Appeals says:

"The substance of the prolix and redundant Complaint is that the PROTRACTED STATE LITIGATION, had

the designed and conspiratorial effect of depriving appellant of his adjudicated property rights, without due process of law or the equal protection of the law. The litigation complained of is in the reported decisions. See Tibbals v Keys 281 Pac 190— * *" This is 40 Wyo 524.

The complaint alleged such to be a fact, and that it was done wilfully, maliciously, conspiratorially, with the designed evil and purposeful intent to discriminate against plaintiff, and that it had accomplished that purpose in violation of the Civil Rights Acts of Congress. The motion to dismiss admits this. The Court of Appeals by citing 40 Wyo 524, and the allegations of the complaint, likewise admits the statement of a perfect claim. The Wyoming Supreme Court therein established a FIRST TRUST, which is equitable title of ownership, superior to a mere lien. And this was foreclosed with final judgment, and final sale and deed to Tibbals who in turn deeded to plaintiff.

The court of Appeals then cites the subsequent collateral case of 50 Wyo 277, and other subsequent collateral litigations and states that these subsequent collateral courts had jurisdiction to, and did relitigate and annul the prior final, res judicata, CONCLUSIVE judgment in 40 Wyo 524, a principle of law which the Supreme Court of the United States, and the Federal Courts, including this same 10th Circuit Court of Appeals for other litigants, along with other State Supreme Court decrees cannot be done, and that any attempt to do so is without jurisdiction, and the subsequent collateral judgment is totally void, a complete nullity, which cannot be set up as title, right, or claim, or to justify any defendant whatsoever setting up such subsequent void judgment as a defense.

The Court of Appeals continues:

"It is sufficient for the purposes of this appeal to state that every act complained of was done and performed in

the prosecution and decisions of matters in a court of competent jurisdiction. The court in each instance had jurisdiction of the subject matter and of the parties, and was authorized and empowered to decide the issues presented. Citing Bottone v Lindsay 170 Fed 2nd 705, cert denied 336 U S 944; Ryan v Scoggin 245 Fed 2nd 54. The judgment is affirmed."

This first sentence is true as to 40 Wyo 524, which is so alleged in the complaint as the court therein did have complete jurisdiction over parties, subject matter, with full and complete jurisdiction render the particular judgment, namely, establish the FIRST TRUST, decree foreclosure, which mandate was finally executed by sale, deed, and confirmation of sale and deed to Tibbals Oct 15, 1932, in ancillary case 4623, set up in the Complaint, and so admitted and confessed, is true and correct.

In so far as it relates to the subsequent collateral litigations in 50 Wyo 277, add other cited case, it is not true. A new title (R par 1, pg 3) set up in the complaint herein was not existent in 50 Wyo 277, or 172 Fed 2nd 449. The subject matter was not the same. The court herein had no pleading before it except the complaint. There was no pleading by any defendant setting up the facts for res judicata in 50 Wyo 277, as against the specific alledation of res judicata by 40 Wyo 524. Since 40 Wyo 524 with complete and unquestioned jurisdiction was set up, and admitted, it is impossible to attribute jurisdiction to relitigate in case 50 Wyo 277.

The Court of Appeals has only emphasized and made plain the guilt of defendants in depriving plaintiff of his property without due process of law, and denying him the equal protection of law. Further the Court of Appeals refused to take notice of or adjudicate on the denial of the District Court of the equal protection of Rule 15a, 8 c and Rule 12 h. It further refused to adjudicate on the assignments of error before, namely—judicial immunity of defendant Judges Lewis and Blume; abatement of action

by death of Judge Lewis; and to take notice of and adjudicate on the allegations of the Complaint as stating a claim on which relief could be granted against all defendants.

JURISDICTION

Jurisdiction is conferred under Sec 1254 (1) Title 28 U S C A—(Judicial Code and Judiciary) which provides: "Cases in Courts of Appeal may be reviewed by the Supreme Court by the following methods;

(1) By Writ of Certiorari granted upon the petition of any party to any Civil or Criminal case, before or after rendition of judgment or decree. The date of the judgment of the Court of Appeals herein sought to be reviewed was Dec 20, 1957, and is reported at Fed 2nd.

Jurisdiction in the lower court was conferred under the Constitution and laws of the United States, particularly the 5th and 14th Amendments to the Constitution of the United States, and the Civil Rights Acts of Congress, embodied in 42 U S C A Sec 1983-1985-1986-1988, 1954 Supp.

THE ACTION

This is a suit invoking the direct jurisdiction of the Federal Courts to redress deprivation of Federal Civil Rights enuring to plaintiff under the constitution of the United States, particularly the 5th and 14th Amendments to the Constitution of the United States in violation of the Civil Rights Acts of Congress embodied in 42 U S C A, Sec. 1983-1985-1986-1988, 1954 Supp. Further depriving plaintiff of the inalienable inherent rights, privileges and immunities enuring to him as a citizen of the United States and of Wyoming, and as a member of the American Socity, such rights being embodied in the pronouncements of the Declaration of Independence that: "All men are created equal; that they are endowed BY THEIR

CREATOR with certain inalienable rights; that among these are the right to life, liberty and the pursuit of happiness;"—which include the equal American right to own, possess, and enjoy property. And further depriving plaintiff of the rights privileges and immunities possessed by him and embodied in the God Given assurance and protection proclaimed by the Divine Law of the Master that: "No man can enter into a strong man's house and spoil his goods, except he will first bind the strong man; and then he will spoil his house—(St Mark 3-27)

This is not a suit to relitigate, or to vacate, enjoin, set aside, alter, modify or amend a former judgment of the State court, as the Court of Appeals, and the U S District Court so erroneously found and adjudged. It is a suit to determine if the defendants have under color of state law, subjected or caused to be subjected, plaintiff, a citizen of the United States, and within the jurisdiction thereof, to the deprivation of any rights, privileges or immunities secured by the Constitution and laws in violation of 42 U S C A Sec 1983, 1954 Supp. This is a tort action, under which, all who aid, abet, encourage, influence or assist in bringing about the tort, are jointly and equally liable with the principal. This is one cause of action set up in the complaint.

It is a suit to determine if two or more defendants or other persons, whether defendants or not, have conspired for the purpose of impeding, hindering, obstructing or defeating in any manner, the due course of justice in Wyoming, with intent to deny plaintiff the equal protection of the laws, or to injure him or his property for lawfully enforcing, or attempting to enforce the right of plaintiff to the equal protection of the law, in violation of 42 U S C A Sec 1985- 1954 Supp. as charged in the complaint.

It is a suit to determine if defendants, having knowledge of the wrongs conspired to be done, and mentioned

in Sec 47 of this title, are or were about to be committed, and having power to aid in preventing the commission of the same, neglects or refuses to do so—if the wrongful act be committed—shall be liable—for all damages caused by the wrongful act— * and any number of persons guilty of such wrongful neglect or refusal may be joined as defendants—42 U S C A Sec 1986, 1954 Supp (For statutes see Appendix, pg 43-44)

The above statutes are a companion statute to Sec 19—Criminal Code—18 U S C A Sec 51 and are construed PARI MATERIA. The criminal statutes protect the public, and vindicates a public wrong, while the civil statutes vindicates the rights of the individual. In either instance, it is necessary to examine, analyze, and apply the conduct of defendants, whether Judges or individuals, to determine if the statutes, civil or criminal, have been violated, but the purpose is not to relitigate.

Property may be taken without due process of law, and equal protection of the law may be accomplished under color of law by state action, either thru its executive, or legislative, or judicial branches of government. It is no less a taking of property without due process of law, or denial of equal protection of law when done by the judicial branch, than when done by either of the other branches. If done by the judicial branch it necessarily is accomplished thru judicial judgment, decree or order. The question then is; "Has there been an abuse or misuse of judicial power or authority whereby plaintiff has been deprived of his federal rights, privileges and immunities?"

REASONS RELIED ON FOR ALLOWANCE OF THE WRIT

I

1. Certiorari should be granted because the Court of Appeals in the instant case has decided an important

federal question in a way probably untenable and in conflict with the applicable decisions of the Court, and as well in conflict with prior decisions of this same Court of Appeals for other litigants under like and similar circumstances, namely: Contrary to the law of this Court, as well as the law of this same Court of Appeals for other litigants under like and similar circumstances, and in conflict with the established law of Wyoming for other litigants under like and similar conditions, and contrary to the universally established law of the entire land, which decree:

a) That the finad judgment, executed by judicial sale, deed, and confirmation of sale and deed, of a Court of competent jurisdiction, with jurisdiction of the parties, and subject matter, and jurisdiction to render the particular judgment it did, is final, absolute and conclusive between the parties and privies, and neither the judgment, or judicial sale, deed, with confirmation of the judicial sale and deed—the order of confirmation being a final conclusive judgment possessing all the attributes of a final judgment, is not subject to relitigation, attack, question, alteration, modification, defeat, delay or vacation in any subsequent collateral court or case between the same parties or privies, or any one claiming under such parties or privies:

b) That any such judgment itself is a valuable property right, a Rule of Property and the property or property right and title acquired under such judgment, or judicial sale constitute a valuable property right within the protection of the 5th and 14th Amendments to the Constitution of the United States. And the deprivation and taking away of such property or property right or any of the rights privileges or immunities enuring therefrom to the purchaser at such judicial sale is a taking of property without due process of law and a denial of the equal protection of the law in violation of the 5th and 14th Amendments to the Constitution of the United States.

Voorhees v Bank 10 Peters 450
Gringnon' Lessees v Astor 43 U S 319
Throckmorton v U S 98 U S 86

Cromwell v White 94 U S 351- 24 Led 195
United States Shoe Co v U S 258 U S 454, 66Led 717

D U A Uranium Co v Benton 149 Fed Sup 667
Tait v Western Maryland Ry Co 289 U S 620- 77 Led 1405
U S v Mossier 226 U S 236 69Led 262
U S v Herter 148 Fed Sup 349
Griffity v Bogert 59 U S 158, 15 Led 307

Certiorari should be granted because the decision of the Court of Appeals in the instant case is in conflict with the law of the foregoing cases and the effect is to deny petitioner the equal protection of the law and to take his property without due process of law by attributing jurisdiction to the court in the subsequent collateral case 4561, and 50 Wyo 277 to relitigate the prior final, res judicata, conclusive judgment, sale, deed, and confirmation of sale and deed in the prior cases, 4182-4623 of the Fremont Wyoming District Court and 40 Wyo 524, cases 1667, and 1676 of the Supreme court set up in the complaint and to annul the same.

II

Certiorari should be granted because the Court of Appeals in the instant case has decided an important federal constitutional question probably untenable and in direct conflict with the decisions of this Court, and in conflict with decisions of the same Court of Appeals, and also other federal courts, and also in conflicted with decisions of the Supreme Court of Wyoming for other litigants under like and similar circumstances, embodied in the principle of law commonly referred to as the law of prior, sole, exclusive jurisdiction, custody and control of properties in the First Court, which is the court whose jurisdiction is first invoked by filing the Bill in this and fed-

eral courts, and from the date of service of summons in Wyoming under Sec 3-907 Wyo Stat, 1945, the object and purpose of suit being to appropriate the specific properties to the claim of the plaintiff. The rule is that from date of filing the Bill, or service in Wyoming, the properties are in the prior sole exclusive jurisdiction, custody and control of the First Court, and this continues on until the purpose of the suit is accomplished by final judgment, execution and sale. And then on in aid of jurisdiction to place the purchase at the sale in possession and to protect the title of the purchaser at the judicial sale. It is a Rule of Property and of jurisdiction.

Further, that from the time of filing the Bill and securing service in Wyoming, no other subsequent court of concurrent jurisdiction, in a subsequent collateral case has jurisdiction, power or authority in law law to interfere with, obstruct, delay, defeat or in any way molest the process of the First Court. And any attempt to do so is totally void and without jurisdiction. And any contrary order or judgment of such subsequent collateral court confers no adverse right whatsoever as against the prior plaintiff, and cannot be set up as a defense, or claim of right by anyone claiming thereunder.

Kline v Burke Construction Co 260 U S 266
Root v Woolworth 150 U S 401
Riversides Cotton Mills Co v Alabama & Georgia M Co 198 U S 189
Fayweather v Ritche 195 U S 296
Rickey Land & Cattle Co v Miller 152 U S 258
Freeman v Howe 7 How 612
Buck v Galbreath 70 U S 334
Stillman v Combe 198 U S 435
Lang v Chotaw 160 Fed 359
Brun v Mann 80 80 C C A 513-151 Fed 145
Covell v Hyman 11 U S 176
United States v Johnson 73 U S 166
Farmers Loan & Trust Co v Lake Street Ry 177 U S 51

Wisewall v Sampson 55 U S 52
State v Palmer 158 Fed 705- 212 U S 118

This same Court of Appeals;

Continental Bank & Trust Co v Apodaca 239 Fed 2nd 295

The Wyoming Supreme Court:

Bank of Chadron v Anderson 6 Wyo 518,48 Pac 197, —Quoting Taylor v Taintor 16 Wall 366
Tibbals & Spriggs v Graham,Rec. 50 Wyo 277— after stating this as a Rule of Property, denied the plaintiff the benefit of the law it so declared by declaring that case 4561—Marrin v Midwest Mines Corp, filed Nov 3,1930 was prior in time to March 17, 1928,the date Tibbals filed and served case 4182, 40 Wyo 524.

Other State Supreme Courts:

State ex Rel Sullivan v Reynolds 209 Mo 161.107 SW 487
Ketchem v District Court (Okla) 198 Pac 481
Stanolind Oil Co v Busy 90 Pac 2nd 877 (Okla)
Black Panthier Oil Co v Swift 170 Pac 238 (Okla)
Operator's R P Co v Tulsa 56 Pac 2nd 400 (Okla)
Atlas Supply Co Roberts 68 Pac 2nd 76 (Okla)
Neilson v Schiller (Utah) 66 Pac 2nd 365
Holm v Pratt 176 Pac 266

Certiorari should be granted because the decision of the Court of Appeals in the instant case, is in conflict with the law declared in the foregoing decisions, and is in conflict with Sec 3-907 Wyo Stat. 1495—which confer full, complete, prior, exclusive jurisdiction, custody and control of the properties on the prior court in cases 4182 and 4623 of the Fremont County Wyoming District Court and cases 40 Wyo 524 and cases 1667 and 1676 of the Wyoming Supreme Court to render final judgment, issue order of sale, make sale and deed of the properties at issue therein, and to confirm such sale and deed to Tibbals as set up in the complaint, which judgment sale and deed

and the title of the purchaser are not subject to relitigation, question, or annulment.

And certiorari should be granted herein because the decision of the Court of Appeals in the instant case is in conflict with the aforesaid decisions of this Court, and in conflict with its own prior decisions for other litigants under like and similar circumstances, and in conflict with the decisions of other federal Courts of Appeal, in that it attributes jurisdiction to the subsequent collateral court in 50 Wyo 277, and other cited cases, to relitigate, obstruct, defeat, annul, set aside and vacate the prior final, CONCLUSIVE, res judicata judgment, sale, deed, and confirmation of sale and deed to Tibbals, grantor of plaintiff, in cases 4182—and the ancillary case 4623 of the Fremont County Wyoming District Court, and of the Wyoming Supreme Court on appeal in 40 Wyo 524, and cases 1667 and 1676 of the same Supreme Court, the effect of which is to deny petitioner the equal protection of the law, and take away his property without due process of law, and to deprive petitioner of the right, privilege and immunity to own, possess and enjoy his property, enuring to him under said deeds, and enuring to him as a member of the American society and a citizen of the United States, and enuring to him as a human being under the concepts and pronouncements of Divine Law, all in violation of petitioner's Civil Rights under 42 U S C A Secs 1983-1985-1986-1988 (1954 Supp).

III

Certiorari should be granted because the Court of Appeals in the instant case has decided an important question and rendered a decision probably untenable and in conflict with the applicable decisions of this Court, and other federal Courts of Appeal, and in conflict with the State law of Wyoming. The effect of the decision of the Court of Appeals herein is to deprive petitioner of the

right, privilege and immunity accorded all other citizens and litigants under like and similar circumstances to have litigation end; to have an end to litigation with parties and privies, and those claiming under such parties and privies; to be free from taking notice of or relitigating questions that were finally and conclusively litigated by the Court of competent jurisdiction, with full and complete jurisdiction of the parties, and subject matter, and with jurisdiction to render the particular judgment it did render; to be free from taking notice of or relitigating with a stranger in right and title; to be free from litigating with a wilfull, malicious trespasser his false and void claim to the right of possession, or title to the properties involved in and adjudicated in the final, conclusive, res judicata judgments of the Court in cases 4182, and the ancillary case 4623 of the District Court of Fremont County, Wyoming, and 40 Wyo 524 on appeal, and cases 1667 and 1676 of the Supreme Court, under and by virtue of which final conclusive judgments the property therein involved was sold by the court and deeded to Tibbals, the grantor of petitioner. Questions and issues finally and conclusively adjudged and determined in the aforesaid cases were:

1 The court in said cases established and foreclosed the First Trust in the properties therein sought to be appropriated to the claim of Tibbals, grantor of petitioner;

2 Under mandate of the Supreme Court of Wyoming in 40 Wyo 524, the First Trust of Tibbals, grantor of petitioner, was foreclosed on Oct. 15, 1932, by judicial sale and deed to Tibbals in the ancillary case 4623 aforesaid; (R par 18-pg 11) of all of said properties;

3 In the final judgment in case 4623, the Court did specifically adjudge that alleged receiver Graham had no claim, right, or title whatsoever in and to said properties involved in the First Trust being therein foreclosed, and

expressly excluded the alleged receiver from any such claim by its final judgment; There never was and never could be any question but that this was the correct judgment under law.

4 Tibbals had been and was being subjected to useless, baseless, annoying repeated and endless litigation, and relitigations, with the same parties, and privies, including the alleged receiver of a privy. He set up by specific plea the fact of this baseless neverending litigation and relitigations in case 4623 and asked and demanded of the court that he be relieved from further annoying, baseless relitigations with the same parties and privies over questions that had been finally and conclusively determined by the final judgment in 40 Wyo 524, and cases 1667 and 1676 of the Supreme Court (R par 11-pg 7) and on hearing the court in its final judgment in case 4623, did grant the plea, did finally and conclusively adjudge that the alleged receiver had no right or claim whatsoever to the properties, and did enter a permanent injunction in favor or Tibbals, enjoining the adverse parties, and those claiming under such adverse parties from ever thereafter carrying on or annoying Tibbals, grantor of plaintiff herein, with further interferring with Tibbals in getting execution and foreclosing his First Trust, or from interferring with the sale, or the title acquired at the sale, or his purchaser at the sale, or from molesting him in any way from enjoying the full fruits of his judgment, or the title of the purchaser at the sale. The court did then render final conclusive judgment in favor of Tibbals, did make the final judgment as entered on the mandate in case 4182, decreeing foreclosure, a part of the final judgment in case 4623; and did then again reestablish the First Trust of Tibbals in the properties, and did decree foreclosure of the First Trust by sale of the properties in accordance with the mandate of the Supreme Court in 40 Wyo 524; and did enjoin any further interference with

Tibbals in foreclosing his final conclusive judgment. (R. par 18-pg 11)

4 The adverse parties, and privies, including the alleged receiver Graham, bowed to and accepted as final and conclusive the final judgment of the court and the injunction against them therein enjoining further interference with Tibbals or obstruction to the process of the court. They filed in the case a written Waiver of Right of Appeal, and in it specifically asked the court to make the judgment aforesaid final, absolute and conclusive. The adverse parties and owners of the properties were satisfied with the final judgment and ceased further opposition, or attempts at further relitigation. While the foreclosure sale was being advertised they filed another and further written ratification of the judgment, which was joined in by this same alleged receiver Graham, wherein all of said parties asked the court to make the foreclosure sale, and to sell and deed the properties to Tibbals, and confirm the sale, and deed to Tibbals. And therein did further submit to the court for his approval a written option wherein Tibbals gave an option to a third person to purchase his judgment at any time before sale, or the title acquired at the sale, which option included a provision directing the manner of bidding at the sale inserted for the benefit of the adverse parties, and asked the court to make therein his written order approving the option and manner of bidding. The court did make therein his written order approving the option, and the manner of bidding at the sale. And the adverse parties including the alleged receiver Graham did file therein their written ratification of the option, and manner of bidding, and their written ratification of the order of the court made therein approving the option and manner of bidding, and specifically asked the court to make the sale and deed to Tibbals, and confirm the sale and deed to Tibbals without further notice to them. In strict conformance with law, the court did foreclose the First Trust

by final judgment and foreclosure sale and deed, and confirmation of sale and deed to Tibbals, grantor of petitioner. And the owner did later, on Feb 20, 1950, by deed convey to petitioner any and all claim of right title, interest or demand in and to the properties to petitioner (R par 1-pg 3). Hence every point afterwards set up by the court in 50 Wyo 277, and by the Court of Appeals in the instant case, was placed before the court in its judgment and sale in case 4623, by request of the adverse parties, including alleged receiver Graham was adjudged, finally and conclusively. There could be no possible EXTRINSIC fraud, a necessary and essential element of jurisdiction, and in the absence of such essential element of jurisdiction the Court of Appeals in the instant attributed jurisdiction to the subsequent collateral court in 50 Wyo 277 to relitigate an alleged fraud finally adjudicated by a prior court of competent jurisdiction in case 4623, and approved by express written order and judgment, followed by written approval and ratification by all adverse parties, including the same alleged receiver.

Throckmorton v U S 98 U S 82

The Court of Appeals in the instant case, in conflict with the established law of this court in the above leading case, has deprived petitioner to the right privilege and immunity to be free from endless litigation with a trespassing alleged receiver, a stranger in right or title (May v Pention, (Wyo) 16 Pac 2nd 35; an alleged receiver with no creditors (Simmons v Parrent (Wyo) 256 Pac 2nd 105), attributing to the alleged received rights he did not have under the law of Wyoming Barber v Rena Nash Motor Co 260 Pac 2nd 928,) whereby petitioner is denied the equal protection of the law and deprived of his property without due process of law.

IV

Certiorari should be granted because the Court of Appeals in the instant case has decided an important question and rendered a decision probably untenable and in conflict with the applicable decisions of this Court and other federal Courts of Appeal in this:

That petitioner has been deprived of rights privileges and immunities secured to him by the 5th and 14 Amendments to the Constitution of the United States not to be punished and subjeced to reprisals thru citation for conempt (R par 25, pg 14-15) for asking a rehearing in 50 Wyo 277, and setting up therein that the decision was the result of bias and prejudice of Judge Blume and associates, and setting up that his property was being taken without due process of law and he was denied the equal protection of the law. As a further ground for rehearing, petitioner set up he was entitled to have the case determined on TRUTH, but contrary thereto the judges as a basis for jurisdiction had created and asserted two premises, both false; and that the Court had by judicial assertion created and asserted title in a wilfull malicious trespasser as against the owners, whereby plaintiffs were deprived of their property without due process of law and were denied the equal protection of the law. And again had been subjected to punishment and replisal for having exercised a legal right as a candidate for Supreme Court Justice opposing the Judge who had rendered the opinion, and in the campaign had exposed the same conduct of Judge Blume and his associates in their decision in 50 Wyo 277, and thru such reprisal and punishment plaintiff was suspended from the practice of his profession, his means of livelihood for himself taken away, his good name and reputation blasted, while Judge Blume caused the identical District Judge who sat with Jude Blume in 50 Wyo 277 to preside at plaintiff's reprisal trial, conduct abhorant to the Amer-

ican concept of natural justice, and amounting to a deprivation of the constitutional right privilege and immunity of petitioner to a fair impartial trial, in contravention of 42 U S C A Sec 1983-1985-1986, 1988 (1954 Supp)

Bonor v Keys 162 Fed 2nd 136

V

Certiorari should be granted because the Court of Appeals in the instant case has decided an important question and rendered a decision probably untenable and in conflict with the applicable decisions of this Court, and other federal Courts of Appeal in this:

Was petitioner denied the equal protection of the law, and was his property taken without due process of law in contravention of the 5th and 14th Amendments to the Constitution of the United States, and was petitioner deprived of federal rights, privileges and immunities in violation of his Civil Right under 42 U S C A Sec 1983-1985-1986-1988 (1954 Supp) as a result of the denial by the District Court below, affirmed by the Court of Appeals herein, of petitioner's absolute legal right to amend his Complaint under Rule 15 A of the Rules of Federal Civil Procedure? And was he deprived of the same Civil Rights by the action of the District Court below in ignoring Rule 8 c and 12 H of the same Rules under which all affirmative matters, such as judicial immunity, and res judicata must be specially pleaded, or be waived, and the action of the court SUA SPONTE, in interposing and favorably adjudging a defense of judicial immunity for defendants Lewis and Blume, and a defense of res judicata for all defendants? And was petitioner deprived of the same Civil Rights by the action of the said courts in the special of res judicata, and the final and conclusive judgments of the Fremont County Wyoming District Court in cases 4182 and 4623, and of the Supreme Court

of Wyoming in case 40 Wyo 524 and cases 1667 and 1676 of the same court? And without a pleading of any defendant, interpose and favorably adjudge for all defendants a plea of res judicata arising thru the void judgments of the same Wyoming courts in cases 50 Wyo 277 and other cases cited by the Court of Appeals herein?

Peckham v Scanlon 241 Fed 2nd 761
Park-in-Theater Co Paramount Richards Theaters 9 FRD 267
Rupe v Associated Electric Co 6 F R D 309
Fisher v Karl 6 F R D 268
Sheridan Wyoming Coal Co v Krug 172 Fed 2nd 282
Parkinson v California Co 233 Fed 2nd 432—10th Circuit
U S v Newbery M Co 123 Fed 2nd 453
Keene Lumber Co v Leventhal 165 Fed 2nd 815
Keller v French 22 Fed 2nd 341- af 278 U S 563-73 Led 507
Van Sant v American Express Co 159 Fed 2nd 355

And the further question: Did the action abate as to Judge Lewis By his death?

Sec 1988 provided for substitution; Rule 25 F R C P
Nelson v Knox 230 Fed 2nd 483
And Sec 89-1227 Wyo Stat 1945

VI

Certiorari should be granted because the Court of Appeals in the instant case has decided an important question and rendered an opinion probably untenable and in conflict with the applicable decisions of this Court, and in conflict with the applicable decisions of other federal Courts of Appeal, and in conflict with the Constitution of the United States, particularly the 5th and 14th Amendments to that Constitution; and in conflict with the Constitution of Wyoming, especially Secs 2-6-7-8-9-20-32-33-34 of Art I and Sec 25 of Art V thereof; and in conflict with Sec 3-907; and Sec 1-112 of the Wyoming Statutes-1945; and in conflict with the established law

of the land as decreed by the decisions of the Supreme Court of the United States, and federal Courts; and in conflict with the decisions of the Supreme Court of Wyoming for other litigants under like and similar circumstances; and in conflict with the law as declared by the Supreme Courts of other States; and in conflict with the fundamental principles of Constitutional law to the extent that both cannot survive as co-existent, in this:

That it was adjudged and decreed by the Court of Appeals in the instant case that defendants, Judges Lewis and Blume, members of the Wyoming State Judiciary acting in their respective judicial capacities, were each immune from suit when sued by petitioner in the federal courts for violation of petitioner's federal Civil Rights under 42 U S C A Sec 1983-1985-1986-1988, (1954 Supp). And that this is true under the allegations of the Complaint, admitted and confessed by their motions to dismiss, that as such State Judges, they so abused and misused their power and authority in their judicial acts that they denied petitioner the equal protection of the law, and took away his property without due process of law in contravention to the 5th and 14th Amendments to the constitution of the United States, and in contravention to his rights, privileges and immunities secured petitioner under said constitutional provisions, and as enuring to him as a citizen of the United States and as a member of society, and as enuring to him as a human being possessed of the same rights privileges and immunities under the Divine Law of the Master pronunced in Mark 3-27: "No man can enter into a strong man's house and spoil his goods EXCEPT he will first bind the strong man; and then he will spoil his house."

The Court of Appeals in the instant case decreed that such Judges were so immune even tho as alleged and admitted that they were actuated by bias, prejudice, malice, hatred, enmity and ill-will, and acted with the evil and

designed intent and purpose to purposefully discriminate against petitioner, and to deny him the equal protection of the law and take way his property without due process of law. Further that such Judges did actually so abuse and misuse their judicial power and authority as Judges and by their judicial acts did accomplish their evil purpose, and did deny petitioner the right to the use, ownership, and possession of his property for over 24½ years, during which time they held in possession thereof a wilfull, malicious trespasser, under guise of alleged receiver and permitted him and defendant Pioneer Carissa Gold Mines Inc, alleged lessee of the alleged receiver, to deplete the properties by removing therefrom over $70,000. of mineral ores. That further the defendant Judges did approve the false, judicially absurd claim of the alleged trespassing receiver to title of the properties, and did direct and cause him to sell and give a court deed to Pioneer Carissa Gold Mines to said properties, all of which defendants, thru conspiratorial action, did accomplish, to the great irreparable damage of petitioner. Such conduct of defendant Judges, and their conspiratorial defendants was in open, arbitrary, tyranical defiance of the Bill of Rights of the Constitution of the United States, and the Bill of Rights of the Wyoming Constitution, and the express statutory law of Wyoming, and contrary to the universally established law of the entire land.

And further certiorari should be granted because an important federal constitutional question involving judicial immunity is herein presented upon which there is irreconcible conflict between the holdings of the different Courts of Appeal on whether Congress thru 42 U S C A Secs 1983-1985-1986-1988, (1954 Supp) has by legislative action wiped out every vestige of claim to judicial immunity as sometimes recognized under the old common law. The Third Circuit Court of Appeals in Picking v Pennsylvania Ry Co, 151 Fed 2nd 240 declared that Congress had the power to and did, intentionally, wipe out

every vestige of judicial immunity; In Cobb v City of Maldon, 202 Fed 2nd, 701, the U S Court of Appeals agrees, and declares that Congress created a new federal tort where all that has to be proved is that defendants, as a result of their conduct—under color of state law—has in fact caused harm to plaintiff—depriving him of a right secured by the constitution of the United States; McShane v Moldovan 172 Fed 2nd 1016 is in agreement; and other courts, Bonar v Keys 162 Fed 2nd 136; Dinwidde v Brown 230 Fed 2nd 465; Dye v Cox 125 Fed Sup 714; McCoy v Providence Journal 160 Fed 2nd 760; Toledo v Luebo De James 119 Fed Sup 429 all take the same view. On the other hand, the Court of Appeals in the instant case, citing its own decisions in Bottone v Lindsley 170 Fed 2nd 705, and Ryan v Scoggin 245 Fed 2nd 54, agrees with Francis v Craft 203 Fed 2nd 809; and Tate v Arnold 223 Fed 2nd 782 in still clinging to the old common law doctrine of judicial immunity for judges. There is also great confusion, uncertaintity, and disagreement among the different Courts of Appeal, and lower federal courts as well, on the scope and construction of this court's decision in Tenny v Brandhove 341 U S 367, 95 Led 1019, which "prevents giving the act such an awesome construction" and citing this court in Bradley v Fisher 13 Wall 335, 20 Led 646 as authority for sustaining judicial immunity for Judges. So grave is the doubt and uncertaintity that the same Court of Appeals rendering the decision in Picking v Pennsylvania Ry Co is in grave doubt as to whether the Tenny case overrules its Picking decision that it hesitates to give its opinion on that point. Ginsburg v Stern 1, 25 Fed Sup 596; on appeal 225 Fed 2nd 245; and Ginsberg v Stern, case 12,165, just decided.

The conflict in decisions of the different Courts of Appeal and the question of doubt and uncertaintity as to whether this court in the Tenny v Brandhove case. 341 U S 367, 95 Led 1019 intended to overrule the Picking

case presents an important federal constitutional question which can only be settled finally, and bringing harmony to the federal and state judiciary by a clarifying opinion of this court by granting certiorari herein and declaring the law thereon.

The decision of the Court of Appeals in the instant case further is in conflict with the decisions of other federal Courts of Appeal in Sulp v U S 131 Fed 2nd 93; and U S v Jackson 235 Fed 2nd 925; and the applicable decisions of this court in Screws v U S 325 U S 91, 89 Led 1495; and U S v Classics 313 U S 99, 85 Led 1368, construing the companion criminal statute, Sec 19, Criminal Code 18 USCA Sec 51-construed PARI MATERIA, with the Civil Rights statute herein set forth as 42 USCA Sec 1983-85-86-88 1954 Supp

And contrary to the established law of this court in Ex Parte Virginia 100 U S 399; and Hodges v U S 203 U S 1; Hague v C I O 307 U S 496; and in conflict with Fayweather v Riche 195 U S 300. Brown v Allen 344 U S 535 declaring that no court has power to take the property of one man and hand it over to another, because it violates the 14th Amendment of the U S Constitution as a taking of property without due process of law and is a denial of the equal protection of law.

The decision of the Court of Appeals is so repugnant to the fundamentals of Constitutional government, that certiorari should be granted to preserve constitutional government in and for America.

STATUTES INVOLVED

42 U S C A Sec 1983-1985-1986-1988

Sec 1983—Civil Action for deprivation of rights—"Every person who, under color of any statute, ordinance, regulation, custom or usage, of any state or Territory, subjects or causes to be subjected, any citizen of the United States or other person within the jurisdiction

thereof, to the deprivation of any rights, privileges or immunities secured by the constitution and laws shall be liable to the party injured in an action at law, suit in equity, or other proper proceedings for redress. R S Sec 1979"

Sec 985. Conspiracy to interfere with civil rights—Preventing officer from performing duty.;

"2—* * * or if two or more persons conspire for the purpose of impeding, hindering, ovstructing, or defeating, in any manner, the due course of justice in any State or Territory, with intent to deny any citizen the equal protection of the laws, or to injure him or his property for lawfully enforcing, or attempting to enforce, the right of any person, or class of persons, to the equal protection of the law;"

"(3)—* * * in case of conspiracy set forth in this section, if one or more persons engaged therein do, or cause to be done, and act in furtherance of the object of such conspiracy, whereby another is injured in his person or property, or deprived of having and exercising any right or privilege of a citizen of the United States, the party so injured or deprived may have an action for the recovery of damages, occasioned by such injury or deprivation, against any one or more of the conspirators. R S Sec 1980"

"Sec 1986—Same—Action for neglect to prevent—Every person who, having knowledge that any of the wrongs conspired to be done, and mentioned in Sec 47 of this title, are about to be committed, and having power to prevent or aid in preventing the commission of the same, neglects or refuses so to do, if such wrongful acts be committed, shall be liable to the party injured, or his legal representatives, for all damages caused by such wrongful act, which such person by reasonable diligence could have prevented; and such damages may be recovered in an action on the case; and any number of persons guilty of such wrongful neglect or refusal may be joined as defendants in the action.—* * *."

"Sec 1988—Proceedings in vindications of Civil Rights—"The jurisdiction of civil and criminal matters conferred on the District Courts by the provi-

sions of this chapter and Title 18 for the protection of all persons in the United States in their civil rights, and for their vindication, shall be exercised and enforced in conformity with the laws of the United States, so far as such laws are suitable to carry the same into effect; but in all cases where they are not adapted to the object, or are deficient in the provisions necessary to furnish suitable remedies and punish offenses against law, the common law, as modified and changed by the constitution and statutes of the State wherein the court having jurisdiction of such civil or criminal cause is held, so far as the same is not inconsistent with the Constitution and laws of the United States, shall be extended to and if it is of a criminal nature, in the infliction of punishment of the party found guilty."

RULES OF FEDERAL CIVIL PROCEDURE—

"Rule 15—Amended and Supplemental Pleadings—(a) Amendments—A party may amend his pleading once AS A MATTER OF COURSE, at any time before a responsive pleading is served; or if the pleading is one to which no responsive pleading is permitted and the action has not been placed upon the trial calander, he may so amend it at any time within twenty days after it is served. Otherwise a party may amend his pleading only by leave of court or by written consent of the adverse party; and leave shall be freely given when justice so requires. A party shall plead in response to an amended pleading within the time remaining for responce to the original pleading, or within ten days after service of the amended pleading, whichever period may be the longer, unless the court otherwise orders.

"Rule 8 (c) Affirmative Defenses—In pleading to a preceding pleading, a party shall set forth affirmatively ——— . . . waiver, and any other matter constituting an avoidance or affirmative defense. . . .".

"Rule 12-(h)—Waiver of Defenses—A party waives all defenses and objections which he does not present either by motion as hereinbefore provided or, if he has made no motion, in his answer or reply, except (1)—that the defense of failure to state a claim upon which relief can be granted, and the objection of failure to state a legal

defense to a claim may also be made by a later pleading, if one is permitted, or for motion for judgment on the pleadings, or at the trial on the merits; and except (2) that whenever it appears by suggestion of the parties or otherwise that the court lacks jurisdiction of the subject matter, the court shall dismiss the action. The objection or defense, if made at the trial, shall then be disposed of as provided by Rule 15 (b) in the light of any evidence that may have been received."

Rule 25—If a party dies and the claim is not thereby extinguished, the court, within two years after the death may order substitution of the Parties. The death may be suggested upon the record, with substitution."

CONSTITUTIONAL PROVISIONS OF THE UNITED STATES—AMENDMENTS

V

"No person shall be — — — — * nor be deprived of life, liberty or property without due process of law—nor shall private property be taken for public use without just compensation."

XIV

"All persons born or naturalized in the United States and subject to the jurisdiction thereof are citizens of the United States, and of the State wherein they reside. No State shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States; nor shall any State deprive any person of life, liberty or property without due process of law; nor deny to any person within its jurisdiction the equal protection of law."

WYOMING CONSTITUTION.

ART I

ARTICLE I

Sec 2 In their inherent right of life, liberty, and the pursuit of happiness, all members of the human race are equal;

Sec 6—No person shall be deprived of life, liberty or property without due process of law;

"Sec 7—Absolute arbitrary power over the lives, liberty and property of free men exists nowhere in a republic, not even in the largest majority."

"Sec 8—All courts shall be open and every person for an injury done to person reputation or property shall have justice administered without sale, denial or DELAY——"

"Sec 9—The right of trial by jury shall remain inviolate in criminal cases, but a jury in civil cases in all courts — —* may consist of less than twelve men/"

"Sec 20—Every person may freely speak, write, and publish on all subjects being responsible for the abuse of that right. And in all trials for libel, both civil and criminal the TRUTH, when published with good intent and for justifiable ends, shall be a sufficient defense, the jury having the right to determine the facts and the law under direction of the court."

"Sec 32—Private property shall not be taken for private use unless by consent of the owner, except for private ways of necessity, nor in any case without due compensation".

"Sec 33—Private property shall not be taken or damaged for public use or private use without just compensation."

"Sec 37—The State of Wyoming is an inseparable part of the Federal Union, AND THE CONSTITUTION OF THE UNITED STATES IS THE SUPREME LAW OF THE LAND."

"Sec 34—All laws of a general nature shall have a uniform operation."

ART V—Sec 25—No judge of the Supreme or District Court shall act as attorney or counsellor at law.

WYOMING STATUTES 1945

"Sec 1-112,—No Justice of the Supreme Court shall practice as an attorney in any court in this state, nor give give advice touching any cause pending or to be brought therein.

"Sec 3-907—When the summons has been served, or publication made, the action is pending, so as to

charge third persons with notice of its pendency/; And while pending—NO INTEREST CAN BE ACQUIRED BY THESE PERSONS IN THE SUBJECT MATTER THEREOF AS AGAINST PLAINTIFF'S TITLE."

"Sec 89-1227—ABATEMENT—Except as otherwise provided, no action or proceeding in any court shall abate by the death of either or both of the parties there to—EXCEPT—in an action for libel, slander, malicious prosecution, assault or assault and battery, for a nuisance, or against a justice of the peace for misconduct in office which shall abate by the death of either party."

HOLY BIBLE

"Mark 3-27 No man can enter into a strong man's house and spoil his good, EXCEPT, he will first bind the strong man; and then he will spoil his house."

PRAYER FOR WRIT

Wherefore your petitioner prays that a Writ of Certiorari issue under the seal of this Court, directed to the United States Court of Appeals for the Tenth Circuit commanding the Court to certify and send to this Court a full and complete Transcript of the record and of the proceedings of the said Court of Appeals in case numbered and entitled on its docket as No 5662, John J Spriggs Sr—Appellant v Pioneer Carissa Gold Mines Inc. a Corporation, and George B Colemere, Harry H Hime, Spencer J Lewis, Fred H Blume and Harry S Harnsberger, Appellees, to the end that this cause may be reviewed and determined by this Court, as provided by the statutes of the United States; and that the judgment of said Court of Appeals be reversed by this Court, and for such other and further relief as May be proper.

Dated this March 5th, 1958

JOHN J SPRIGGS SR—PETITIONER
Address: 671 Main Street, Lander, Wyoming

CERTIFICATE OF COUNSEL

I hereby certify that I am petitioner, and attorney pro se in the above entitled case and that in my judgment the foregoing petition is well founded in law and fact, and that said petition is not interposed for delay.

Dated at Lander, Wyoming, this March 5th, 1958
Address: 671 Main Street, Lander, Wyo

/s/ JOHN J. SPRIGGS, SR.
JOHN J. SPRIGGS, SR.,
Petitioner and Attorney for Petitioner, Pro Se